

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NEW YORK

JOSE QUEZADA,

Plaintiff,

-v-

06-CV-0228S

ORDER

THOMAS POOLE, et al.,

Defendants.

This matter has been referred to the undersigned, pursuant to 28 U.S.C. § 636(b)((1)(B) and (C) (Docket No. 8). Before the Court is plaintiff's motion challenging imposition of the new amount for the Court's filing fee (Docket No. 6).

On April 6, 2006, the Court received plaintiff's pro se prisoner civil rights Complaint (Docket No. 1) along with his application to proceed in forma pauperis and an authorization, pursuant to 28 U.S.C. § 1915(b),¹ authorizing the correctional facility in which

¹28 U.S.C. § 1915(b) provides:

(b)(1) Notwithstanding subsection (a), if a prisoner brings a civil action or files an appeal in forma pauperis, the prisoner shall be required to pay the full amount of a filing fee. The court shall assess and, when funds exist, collect, as a partial payment of any court fees required by law, an initial partial filing fee of 20 percent of the greater of--

(A) the average monthly deposits to the prisoner's account; or
(B) the average monthly balance in the prisoner's account for the 6-month period immediately preceding the filing of the complaint or notice of appeal.

(2) After payment of the initial partial filing fee, the prisoner shall be required to make monthly payments of 20 percent of the preceding month's income credited to the prisoner's account. The agency having custody of the prisoner shall forward payments from the prisoner's account to the clerk of the court each time the amount in the account exceeds \$10 until the filing fees are paid.

(3) In no event shall the filing fee collected exceed the amount of fees permitted by statute for the commencement of a civil action or an appeal of a civil action or criminal judgment.

plaintiff was confined to pay a \$ 150.00 filing fee from his inmate account (Docket No. 2). At the time of the filing of the Complaint on April 6, 2006, the filing fee for civil actions was \$ 250.00, not \$ 150.00. However, on May 10, 2006, the Court directed plaintiff to submit another authorization which authorized the correctional facility to pay a \$ 350.00 filing fee, instead of the \$250.00 filing fee (Docket No. 4). This Order was issued in error because effective April 9, 2006, the filing fee was increased to \$350.00, but at the time the Complaint was filed three days prior the fee was only \$250.00.²

Accordingly, plaintiff's motion (Docket No. 6) is **granted in part, denied in part**. The Clerk of the Court is directed to take all necessary action to ensure that the correctional facility pay or paid no more than **\$250.00** from plaintiff's inmate account, and that if more than \$250.00 was paid to the Clerk of the Court any amount paid over and above \$250.00 must be reimbursed to plaintiff's inmate account. Once the Clerk of the Court indicates that the full filing fee of \$250.00 has been paid, the Court will issue a Scheduling Order for this action.

SO ORDERED.

/s/ Hugh B. Scott
HUGH B. SCOTT
United States Magistrate Judge

Dated: Buffalo, New York
February 13, 2007

²On February 7, 2005, the filing fee was increased from \$150.00 to \$250.00. Therefore, the filing fee at the time of filing of this action was \$250.00.